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INDIGENOUS ISSUES

Report of the second workshop on a permanent forum for indigenous people within the United Nations system held in accordance with Commission on Human Rights resolution 1997/30

(Santiago, 30 June - 2 July 1997)

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II. A concise indigenous perspective paper. Paper submitted by the Grand Council of the Crees

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IV. Declaration of the First International Indigenous Conference on a Permanent Forum in the United Nations System, Temuco, Chile, 6-9 May 1997

V. Statement by Mrs. Erica-Irene A. Daes, Chairperson-Rapporteur of the Working Group on Indigenous Populations

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* The annexes are contained in addendum 1 to the present report.

Introduction

1. In accordance with Commission on Human Rights resolution 1997/30 of 11 April 1997, the second workshop on a permanent forum for indigenous people within the United Nations system was held in Santiago from 30 June to 2 July 1997. As requested in the resolution, the High Commissioner/Centre for Human Rights invited representatives of Governments, organizations of indigenous people, non-governmental organizations, United Nations organizations and bodies and the specialized agencies to participate in the workshop.

I. ORGANIZATION OF THE WORKSHOP

A. Attendance

2. The following States were represented: Argentina, Australia, Botswana, Brazil, Canada, Chile, China, Colombia, Denmark (Greenland Home Rule), Finland, Guatemala, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, Panama, Peru, Philippines, South Africa, Spain, Sweden, United States of America, Uruguay.

3. The following United Nations bodies were represented: Economic Commission for Latin America and the Caribbean, United Nations Children's Fund, United Nations Development Programme, Secretariat to the Convention on Biological Diversity of the United Nations Environment Programme, Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

4. The following specialized agencies were represented: Food and Agriculture Organization of the United Nations, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization.

5. The following organizations of indigenous people were represented: Aboriginal and Torres Strait Islander Commission, Aidesep-Peru, Alianza Mundial de los Bosques Tropicales, Asociación Indígena de la República Argentina, Asociación Indígena Kespikala Mamiña-Iquique, Centro de Estudios para el Estudiante y la Educación Mapuche, Centro Pehuenche Alto Bio Bio, Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos, Comisión Jurídica de los Pueblos de Integración Tawantinsuyana, Comunidad Carahue, Comunidad Mapuche Xeg Xeg, Confederación de Nacionalidades Amazónicas del Perú, Consejo de Todas las Tierras, Consejo Inter-Regional Mapuche, Coordinadora de Organizaciones e Instituciones Mapuche, Coordinadora Mapuche de la Región Metropolitana, Federación Aymar Markas Provincia Iquique, Grand Council of the Crees, Indian Law Resource Center, Indigenous Woman Aboriginal Corporation, International Indian Treaty Council, International Organization of Indigenous Resources Development, Inuit Circumpolar Conference, Mapuche International Link, Nacional Mapuche Ad-Mapu, National Aboriginal & Torres Strait Islander Legal Services Secretariat, Organización Comunal Loncoche, Parlamento Aymara, Pastoral Indígena de Santiago, Saami Council, Tebtebba Foundation Philippines.

6. The following non-governmental organizations in consultative status with the Economic and Social Council were represented: Commission of the Churches on International Affairs of the World Council of Churches, International Federation of Human Rights Leagues, International Work Group for Indigenous Affairs.

B. Documentation

7. The following documents were made available to the workshop:

Agenda (HR/STGO/SEM/1997/1/Rev.1);

Declaration and report of the First International Indigenous Conference on a Permanent Forum in the United Nations system, Temuco, Chile, 6-9 May 1997 (HR/STGO/SEM/1997/CRP.1);

Written statement by the Grand Council of the Crees (HR/STGO/SEM/1997/CRP.2);

Written statement by the Saami Council (HR/STGO/SEM/1997/CRP.3);

Working paper submitted by the Government of Denmark (HR/STGO/SEM/1997/CRP.4);

Provisional and final list of participants (HR/STGO/SEM/1997/Misc.1 and INF.1);

Commission on Human Rights resolution 1997/30 on a permanent forum for indigenous people in the United Nations system;

Review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people: report of the Secretary-General (A/51/493);

Report of the first workshop on a permanent forum for indigenous people within the United Nations (E/CN.4/Sub.2/AC.4/1995/7).

C. Election of Officers

8. The meeting was opened by Ms. Miriam Krawczyk of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC). A representative of the United Nations High Commissioner/Centre for Human Rights welcomed the participants, thanked the Government of Chile for hosting the workshop and ECLAC for its assistance, and provided background information relating to the meeting. Participants invited Mr. Cristian Maquieira (Chile) and Mr. Kuupik Kleist (Denmark/Greenland) to be the Chairperson and Rapporteur, respectively.

D. Agenda

9. The following agenda was adopted:

1. General debate on the Secretary-General's review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people (A/51/493).

2. Main questions relating to the establishment of a permanent forum for indigenous people:

(a) The United Nations body to which the proposed forum would report;

(b) Mandate and terms of reference;

(c) Activities that might be undertaken by the forum;

(d) Membership;

(e) Participation of indigenous people;

(f) Financial and secretariat implications;

(g) Other matters.

3. Report to be submitted to the Commission on Human Rights and transmitted to the fifteenth session of the Working Group on Indigenous Populations.

II. GENERAL DEBATE ON THE SECRETARY-GENERAL'S REVIEW OF THE EXISTING MECHANISMS, PROCEDURES AND PROGRAMMES WITHIN THE UNITED NATIONS CONCERNING INDIGENOUS PEOPLE

10. Some participants expressed the desire to use the term "indigenous peoples" as opposed to "indigenous people". Other participants noted that reference to "indigenous peoples" was inappropriate in an international environment because the term "peoples" suggested a right of self-determination and sovereignty over natural resources. This report reflects the debate and does not imply acceptance of the usage of either expression. In this report both are used without prejudice to the positions of particular delegations, where divergences of approach remain.

11. The Secretary-General's review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people (A/51/493) was introduced by the representative of the United Nations High Commissioner/Centre for Human Rights. Participants expressed a range of views about the review and the permanent forum in general. While many participants stated that there was no need for a definition of "indigenous people", one government representative considered that there was a need for a clear definition. Some State representatives noted that their Governments had not yet taken a definitive position on many issues being discussed at the workshop, including the question of the establishment of a permanent forum.

However, they agreed to offer comments in an effort to contribute constructively to the discussions. Participants prefaced their opening remarks by expressions of appreciation to the Government of Chile for hosting the second workshop.

12. All speakers welcomed the Secretary-General's review and expressed the view that the report established an important point of reference for the deliberations of the meeting. Participants also expressed satisfaction with the fact that the review was carried out in close consultation with Governments, United Nations bodies and indigenous peoples and organizations.

13. Many participants concurred with the conclusions contained in the Secretary-General's report, in which it is stated that there are virtually no mechanisms within the United Nations system which give indigenous peoples an opportunity to take part in decision-making. Furthermore, many participants stated that adequate procedures, ensuring the full and effective involvement of indigenous peoples in the planning, implementation and evaluation of processes affecting them, did not exist within the United Nations system. In that context it was noted that, as well as giving high priority to considering the establishment of a permanent forum, existing bodies and mechanisms needed to be improved. One participant also noted that Agenda 21 adopted by United Nations Conference on Environment and Development, required the establishment of indigenous focal points within each organization and annual inter-agency coordination meetings in consultation with Governments and indigenous organizations. Also, the Working Group on Indigenous Populations was encouraged to continue its dialogue with Governments, United Nations bodies and indigenous peoples in as broad a manner as possible.

14. It was pointed out by one participant that United Nations organizations and bodies were separate entities with their own governing bodies and that ultimately it was up to the States members of the governing bodies to ensure that indigenous views were incorporated in the work of the organizations concerned.

15. Participants referred to the Secretary-General's comments regarding measures to avoid duplication and strengthen cooperation and consistency of approach and to ensure cost-effectiveness in the programmes of the United Nations concerning indigenous people. Some participants considered that a permanent forum for indigenous people would contribute to better coordination and the achievement of those objectives. In that context it was also noted that the relationship of a permanent forum to existing United Nations structures and mandates should be examined.

16. Participants referred to the ongoing process of reform of the United Nations system, and said that this process of reform should be taken into consideration when discussing the establishment of a permanent forum for indigenous people. Many participants stated that there existed an urgent need to establish the permanent forum. Some participants said that the reform process could be viewed as providing an opportunity to advance the establishment of a permanent forum. Other participants said that the permanent forum was part of the reform process, and that it would add value to the United Nations system.

17. The Chairperson-Rapporteur of the Working Group on Indigenous Populations pointed out that a permanent forum was more necessary than ever in the light of the growing number of United Nations standard-setting and operational activities. She underlined that coordination, transparency and oversight were urgently needed, not only for reasons of efficiency and accountability but also because indigenous people themselves were in certain cases becoming overwhelmed with meetings and information and were losing their capacity to participate fully and meaningfully in all of the international decisions which affected them. She also stated that the United Nations reform process offered an immediate opportunity to establish an effective mechanism for indigenous peoples' participation in the United Nations.

III. MAIN QUESTIONS RELATING TO THE ESTABLISHMENT OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE

18. It was agreed to divide the consideration of questions under agenda item 2 into the following four clusters: (a) Mandate and terms of reference, and activities that might be undertaken by the forum; (b) Membership and participation of indigenous people; (c) United Nations body to which the proposed forum would report and financial and secretariat implications; and (d) Other matters.

A. Mandate and terms of reference and activities that might be undertaken by the forum

19. One government delegation submitted an outline of a permanent forum for indigenous people (annex I). The outline addresses in concrete terms the mandate, membership, procedure, financing, name, placement within the United Nations system and creation of such a forum. Furthermore, two indigenous peoples' organizations submitted written statements addressing the above-mentioned issues (annexes II and III). Moreover, the Declaration of the First International Conference on a Permanent Forum in the United Nations System was also submitted to the meeting (annex IV). It was agreed that the four documents, together with the statement of the Chairperson-Rapporteur of the Working Group on Indigenous Populations (annex V), should be annexed to the report of the workshop.

20. Some participants expressed the view that there was a link between the mandate of the permanent forum and its level within the United Nations system, and that its placement within the system to a large extent would be determined by its mandate.

21. Participants expressed the view that the mandate of the forum should be sufficiently broad to cover all issues affecting indigenous peoples, and that its activities should be of such a character and be carried out in a manner which corresponded to the needs of Governments and of indigenous peoples. The mandate of the permanent forum should go beyond dealing with human rights; the permanent forum should act as an interface between Governments, indigenous peoples and the United Nations system. The mandate should cover areas such as cultural, civil, political, social, economic and human rights, health, development, education and the environment. The future permanent forum could contribute to the resolution of conflicts, oversee and coordinate United Nations activities relating to indigenous peoples, mobilize expertise

on indigenous issues, carry out impact assessments of United Nations activities and policies relating to indigenous peoples, disseminate information on the conditions and the needs of indigenous peoples and on the implementation and realization of international standards relating to indigenous peoples' human rights, as well as hear complaints. The mandate of the permanent forum should not duplicate that of existing United Nations bodies or mechanisms.

22. Participants referred to the Charter of the United Nations, and said that its provisions could provide guidelines with regard to the mandate of the forum. In this context, it was noted that Article 62 of the Charter states that the Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned. Moreover, it may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. The permanent forum would be valuable for the Council in its dealing with issues related to indigenous peoples.

23. Some participants expressed the view that it was necessary to establish a legal framework for the forum and its mandate. The draft United Nations declaration on the rights of indigenous peoples, once adopted, would constitute an adequate legal basis for the activities of the permanent forum. Other participants stated that since many indigenous rights are already included in various international instruments, the permanent forum could start its work on the basis of those instruments.

24. The permanent forum could assist in the follow-up to the programmes of action adopted at high-level conferences as well as other decisions and resolutions on indigenous issues adopted by the United Nations, monitor United Nations activities, play a role in the programmes and projects of the United Nations system and contribute to the well-being of indigenous peoples.

B. Membership and participation of indigenous people

25. Participants considered that the principle of full participation of indigenous peoples in the permanent forum was fundamental to the success of the forum. Participants identified two categories of participation: (a) participation as member with the right to vote; and (b) participation as observer. It was crucial for the legitimacy and credibility of the forum that the forum be composed of an equal number of governmental and indigenous representatives. Some participants said that indigenous peoples should determine their membership in the forum and that direct indigenous representation should be determinant in this regard. However, one governmental delegation stated it could not support a forum within the United Nations system where indigenous peoples were granted the same legal status as Member States. Another government representative said that there was no precedent for membership in United Nations bodies beyond the membership of Governments and independent experts. Many participants urged that a forward-looking approach be taken to the questions of indigenous peoples' participation and representation in the permanent forum in the framework of

the principle of equality. One indigenous organization stated that its preference was to be recognized as a "nation" by the United Nations General Assembly.

26. Several delegations expressed the view that the composition of the permanent forum should be mixed, i.e. made up of States and legitimate indigenous authorities acknowledged by the indigenous peoples and autonomously elected by all States members of the forum. The same delegations referred to the arrangements for participation and membership of the Development Fund for the Indigenous Peoples of Latin America and the Caribbean. Other participants stressed that indigenous representatives should be nominated by indigenous peoples themselves. Several participants said that the forum should have between 15 and 25 members.

27. Some participants referred to the open participation of indigenous peoples in the United Nations Working Group on Indigenous Populations and suggested that the permanent forum should adopt rules and procedures which enabled it, when it so desired, to apply the same flexibility. One participant said that the rules and procedures of the permanent forum should provide for maximum opportunities for indigenous participation.

28. Some participants said that the right to vote in the forum should not be overemphasized because the forum should try to adopt recommendations and decisions by consensus, although all members of the forum should have the right to vote.

29. Participants said that United Nations agencies, non-governmental organizations and independent experts should participate in the work of the forum, although some delegations expressed the view that they should only be observers. Several participants expressed their opposition to the notion of "independent experts" on indigenous affairs as indigenous peoples were capable of representing themselves as experts on their own status, conditions and affairs.

30. The importance of the forum striking the right balance between legitimacy and effectiveness was identified as a vital element. Many participants referred to the need to respect the decision-making of indigenous peoples with regard to the selection, appointment or election of their representatives through their political institutions. Several participants proposed that in order to ensure an efficient and well-functioning permanent forum an automatic review should be undertaken with regard to its size and mandate after a certain period of time.

C. United Nations body to which the proposed forum would report and financial and secretariat implications

31. Many participants considered that the permanent forum should be established at the highest level in the United Nations system, and most appropriately under the Economic and Social Council. Some participants said that the permanent forum should be a functional commission of ECOSOC. Others stated that it should be advisory in its character. Some participants said that the forum could be established as an advisory body to the General Assembly. One participant said that the forum should be linked to the

Trusteeship Council, while another delegation proposed that the permanent forum could submit its reports to the Commission on Human Rights. Finally, some participants suggested that the permanent forum should be established as a separate body directly under the Secretary-General. Some participants recommended that in response to the review of the Secretary-General, a post of indigenous adviser should be established immediately within the Office of the Secretary-General, in order to strengthen indigenous issues within the United Nations.

32. Many participants suggested that the forum should be funded from the United Nations regular budget, although some considered that voluntary contributions could be used to finance supplementary activities of the forum.

33. Some participants expressed their concern about the establishment of a permanent forum in the light of the financial constraints faced by the United Nations. Other participants stated that the financial difficulties of the United Nations should not be seen as an obstacle to the establishment of the permanent forum. Some participants considered that it was essential that any discussion of the possible establishment of a permanent forum be realistic in terms of resources and take into account the ongoing fundamental reform of the United Nations. Any proposal in that regard must be examined in light of (a) the availability of voluntary funding; (b) a shrinking United Nations budget which left no room for net growth in the organization; and (c) the imperative to avoid duplication and to direct scarce resources to activities having the greatest impact and benefits.

D. Other matters

34. Many participants suggested that the Commission on Human Rights at its fifty-fourth session should consider how to further the process of the establishment of a permanent forum for indigenous people within the United Nations system, inter alia through the drafting of concrete proposals to this effect and bearing in mind the possibility of submitting the matter to ECOSOC for action.

35. The workshop noted with appreciation the progress achieved so far in the Copenhagen and Santiago workshops. Participants agreed that the report of the latter should be sent to Governments, the United Nations system and organizations of indigenous people in accordance with Commission on Human Rights resolution 1997/30. Participants urged all interested parties to further the process of the establishment of the permanent forum by commenting on the report and making concrete proposals in order to contribute to the consideration of this matter at the fifty-fourth session of the Commission on Human Rights.